

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

DAVIS LEVINE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2733

Decision No. CU-656

Counsel for claimant:

Rogers, Morris & Ziegler
by Dwight L. Rogers, Jr., Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated November 15, 1967, the Commission denied this claim for claimant's failure to meet the burden of proof in that he failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated, or otherwise taken by the Government of Cuba.

The claimant, a national of the United States since birth, having thereafter submitted acceptable evidence in support of the claim, and the matter having been duly considered, it is

ORDERED that the Proposed Decision be and it is hereby amended.

Claimant has submitted (1) deed No. 344, dated October 31, 1958, between Francois Gambo, as grantor, and claimant herein (represented by David Hunter Flanagan), as grantee. Pursuant to said deed, duly registered with the Isle of Pines Registrar of Property, the grantor conveyed to the grantee an unimproved parcel of land 750 square meters in size described as Parcel 8, Block 1, Reparto Howard, separated from the South part of Lot 5, Colonia Reina Amalia, Sierra de Casas, Isle of Pines.

Claimant has also submitted (2) deed No. 345, dated October 31, 1958, between Dieuwertje de Vries Howard and her husband, Robert Leon Howard,

as grantors, and claimant herein (represented by David Hunter Flanagan), as grantee. Pursuant to said deed, duly registered with the Isle of Pines Registrar of Property, the grantors conveyed to the grantee an unimproved parcel of land approximately 3,097 square meters in size described as Parcels 36, 37, and 38, Block B, Santa Rosalia Heights, separated from Lot 5, Section 12, Hacienda Santa Rosalia, Sierra de Caballos, Isle of Pines.

On December 6, 1961 the Cuban Government published its Law 989 (Official Gazette, XXIII, No. 237, p. 23705) which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

As the record shows, in 1961 claimant was residing outside of Cuba. The Commission finds, in the absence of evidence to the contrary, that claimant was the owner of the aforementioned parcels of unimproved real property and that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

Based on the entire record, including the deeds, cancelled checks, telegrams, statements of costs and related material, the Commission finds that the total value of claimant's investment in Item (1) was \$3,508 and in Item (2) was \$1,052.50. Accordingly, the Commission concludes that claimant suffered a loss in the aggregate amount of \$4,560.50 within the meaning of Title V of the Act on December 6, 1961.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that DAVIS LEVINE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Thousand Five Hundred Sixty Dollars and Fifty Cents (\$4,560.50) with interest at 6% per annum from December 6, 1961 to the date of settlement.

Dated at Washington, D. C., and
entered as the Amended Proposed
Decision of the Commission

JUN 18 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

DAVIS LEVINE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2733

Decision No. CU - 656

Counsel for claimant:

Rogers, Morris & Ziegler by
Dwight L. Rogers, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$4,560.50, was presented by DAVIS LEVINE and is based upon the asserted ownership and loss of certain unimproved real property. Claimant states that he has been a national of the United States since his birth in the United States.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

This claim is based upon claimant's asserted ownership and loss of certain unimproved real property on the Isle of Pines, Cuba. However, except for his own letters and statements, claimant has submitted no documentary evidence to establish his claim.

By Commission letter of June 26, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Although claimant subsequently communicated with the Commission, none of the suggested evidence was submitted.

On September 14, 1967, counsel were invited to submit any evidence available to them within 45 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property by a national of the United States which was nationalized, expropriated or otherwise taken by the Government of Cuba. Moreover, claimant has failed to establish his qualification as a national of the United States.

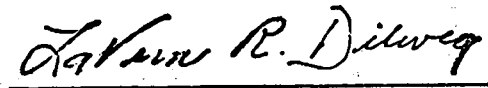
Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

NOV 15 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU- 2733